

FCC MAIL ROOM

DOCKET FILE COPY ORIGINAL

Federal Communications Commission

DA 01-564

2001 MAR -6 P 4:18  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Emmetsburg and Sibley, Iowa)

MM Docket No. 01-65 /  
RM-10078

### NOTICE OF PROPOSED RULE MAKING

Adopted: February 21, 2001

Released: March 2, 2001

Comment Date: April 23, 2001

Reply Date: May 8, 2001

By the Chief, Allocations Branch

1. The Commission has before it for consideration a Petition for Rule Making filed by Eisert Enterprises, Inc. ("Eisert"), requesting the substitution of Channel 261C3 for Channel 261A at Emmetsburg, Iowa, and modification of the license for Station KEMB to reflect the higher class channel. Eisert submitted information in support of the proposal and expressed its intention to apply for Channel 261C3 at Emmetsburg.

2. We believe the proposal warrants consideration because the proposed allotment would provide expanded local FM service for the community of Emmetsburg, Iowa. In support of its proposal, Eisert states that upgrading Station KEMB from a Class A to a Class C3 facility will provide service to an additional 24,193 people while continuing to place a city grade signal over Emmetsburg. To accommodate the upgrade at Emmetsburg, Eisert has also requested the deletion of vacant Channel 262A at Sibley, Iowa. Eisert argues that since Sibley has a second channel, Channel 282A, the deletion of Channel 262A will not remove the potential sole local service from the community.<sup>1</sup> Eisert points out that Channel 262A was allotted to Sibley more than 13 years ago and remained vacant for seven years until 21<sup>st</sup> Century Radio Ventures, Inc. applied for and received a permit to construct a station on Channel 262A (BPH-19930809MA). The permit automatically expired on December 21, 2000, as extended. Eisert argues that there is clearly a lack of interest for activating a channel in Sibley since the channel was vacant for seven years prior to receipt of an application which expired after six years when 21<sup>st</sup> Century Radio Ventures, Inc. failed to construct the station.

<sup>1</sup> Channel 282A has been included in Auction No. 37. See Public Notice dated September 29, 2000, DA 00-2232.

3. In view of the fact that the proposed allotment could provide Emmetsburg, Iowa, with expanded local FM service, the Commission believes it would serve the public interest to solicit comments on the proposal to substitute Channel 261C3 for Channel 261A and modify the license for Station KEMB accordingly. A staff engineering analysis confirms that Channel 261C3 can be allotted to Emmetsburg in compliance with the Commission's spacing requirements provided Channel 262A is deleted at Sibley, Iowa.<sup>2</sup> In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 261C3 at Emmetsburg. We shall also seek comments as to whether we should delete vacant Channel 261A at Sibley, Iowa, to accommodate the upgrade at Emmetsburg. Channel 262A was allotted to Sibley in MM Docket 84-231. See 100FCC 2d 1332 (1985). The channel is currently vacant with no applications on file. If an expression of interest is filed during the comment cycle in this proceeding, we would retain the channel in Sibley. It is Commission policy not to delete a channel in which interest has been expressed. If no interest is expressed for a channel at Sibley, we shall delete Channel 262A and no substitute allotment will be made to the community. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Emmetsburg and Sibley, Iowa:

Community	Channel No.	
	Present	Proposed
Emmetsburg, Iowa	261A	261C3
Sibley, Iowa	262A, 282A	282A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before April 23, 2001, and reply comments on or before May 8, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

---

<sup>2</sup> The coordinates for Channel 262C3 at Emmetsburg are 43-07-24 and 94-51-29.

Peter Tannenwald  
Kevin M. Walsh  
Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode island Avenue, NW, Suite 200  
Washington, D. C. 20036

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

---

**APPENDIX**

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments: Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 Twelfth Street, SW, Washington, D. C 20554.